At-Large Workspace: Phase 1 Initial Report of the Review of All Rights Protection Mechanisms in All gTLDs Policy Development Process

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<td>04 May 2020</td>
<td>Phase 1 Initial Report of the Review of All Rights Protection Mechanisms in All gTLDs Policy Development Process</td>
<td>ADOPTED</td>
<td>Drafting team volunteer(s): Gregory Shatan, Marta Moll</td>
<td>29 April 2020</td>
<td>04 May 2020</td>
<td>04 May 2020</td>
<td>07 May 2020</td>
<td>04 May 2020</td>
<td>Ariel Liang <a href="mailto:policy-staff@icann.org">policy-staff@icann.org</a></td>
<td>AL-ALAC-ST-0520-01-00-EN</td>
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Brief Overview

**Purpose:** This Public Comment proceeding seeks to obtain input on the Phase 1 Initial Report of the Review of All Rights Protection Mechanisms (RPMs) in All gTLDs Policy Development Process (PDP). The PDP Phase 1 focuses on reviewing all the RPMs and associated structures and procedures applicable to gTLDs launched under the 2012 New gTLD Program.

**Current Status:** This Initial Report is being posted for Public Comment as foreseen in the PDP Charter and the GNSO PDP Manual.

**Next Steps:** Following review of Public Comments submitted, the PDP Working Group will incorporate input/feedback received as it works toward recommendations for inclusion in its Final Report.

**Your Comment:** Your submission, including responses to questions and your name, will be published in the Public Comment archive on ICANN.org's website. If you have any questions regarding Public Comment, please contact public-comment@icann.org.

Section I: Description and Explanation

Per the PDP Working Group's Charter, its Phase 1 work focuses on reviewing all the RPMs and associated structures and procedures applicable to gTLDs launched under the 2012 New gTLD Program, specifically:

- The Uniform Rapid Suspension System (URS);
- The Trademark Clearinghouse (TMCH);
- The Sunrise Periods and Trademark Claims Service provided by the TMCH; and
- The Trademark Post-Delegation Dispute Resolution Procedure (TM-PDDRP).

The Working Group’s Charter contains a list of specific topics and questions that were reproduced verbatim from previous ICANN community consultations on the topic of RPMs. This led to the Working Group agreeing, early on in its work, that it would first need to refine these original Charter questions so as to clarify their intent and ensure that the PDP discussions remain objective and neutral.

To address the final agreed Charter questions for Phase 1, the Working Group engaged in extensive data collection and analysis efforts, as to date there have not been comprehensive studies or data collected that measures the effectiveness of the Phase 1 RPMs.

As a result of its analysis of the data and input it collected, the Working Group is proposing a total number of twenty-six (26) preliminary recommendations at this time. No formal consensus call has been taken on any of the preliminary recommendations, but these received sufficient support among the Working Group members to be included as preliminary recommendations for public comment.

The Working Group is also including seventeen (17) questions for which it wishes to seek community input. The Working Group hopes the community input will allow it to finalize any recommendations that it may wish to make on these topics in its Final Report.

In addition, the Working Group is putting forward a total number of twenty-four (24) individual proposals specifically pertaining to the URS and TMCH. These proposals were submitted by individual Working Group members for Working Group consideration but have not, at this time, attained sufficient agreement amongst the Working Group members such as to become preliminary recommendations.

This Initial Report also includes a summary of the Working Group's discussion of the additional marketplace RPMs that several Registry Operators and the current TMCH Validation Service Provider have voluntarily adopted, over and above the mandatory ICANN RPMs. The Working Group did not develop any specific recommendations concerning these RPMs as they are outside the scope of this PDP.
It should be noted that the PDP Charter includes several general, overarching questions as well as a number of additional questions that the Working Group is expected to address at the conclusion of Phase 1 or Phase 2 of its work, as appropriate. The Working Group also invites input on six (6) overarching Charter questions during the public comment proceeding for the Initial Report. Furthermore, after the completion of the public comment, the Working Group is expected to consider a general question about the additional marketplace RPMs, which is related to one of its overarching Charter questions.

To provide your input, please complete the following form which is intended to focus your attention on those aspects that the PDP Working Group is looking for particular input on, as well as subsequent review by the Working Group: https://forms.gle/dp7vo4dYmLantNsx7. To facilitate off-line work, or for those who may not have access to the form, you can download a PDF or Word version of the form.

This Initial Report will be posted for public comment for 40 days. Please note that similar to other Public Comment proceedings, all responses will be made public.

After the Working Group carefully reviews public comments received on this Initial Report, it will finalize its recommendations and develop the Final Report. The Working Group’s review of the public comments may lead to Working Group consensus to:

- Amend, add, and/or remove its preliminary recommendation published in this Initial Report;
- Make final consensus recommendations on any of the proposals submitted by individual Working Group members that are published in this Initial Report.

Following a formal consensus call at the plenary level, the Working Group’s Final Report will be updated accordingly with the proposed PDP final recommendation, which will then be reviewed by the GNSO Council and, if approved, forwarded to the ICANN Board of Directors for approval as an ICANN Consensus Policy.

Section II: Background

The question of who legally has rights to, or is the legitimate holder of, a domain name can be open to dispute. Since the Internet is a global resource and domain name holders are dispersed among numerous different jurisdictions, finding an effective, enforceable and reliable process to resolve rights disputes across various jurisdictions is not an easy undertaking.

Over time, ICANN has developed a number of dispute resolution policies and procedures that attempt to address this issue and provide enforceable remedies for certain types of disputes concerning domain name registrations. These policies are essentially alternative dispute resolution procedures to court litigation that nevertheless do not preclude the initiation of legal proceedings in the appropriate jurisdiction.

In relation to domain name disputes concerning the registration and use of legally protected trademarks, the Uniform Dispute Resolution Policy (UDRP) is the longest standing alternative dispute resolution procedure, which has been an ICANN Consensus Policy since 1999.

As a result of the 2012 New gTLD Program, several new rights protection mechanisms (RPMs) were also developed to mitigate potential risks and costs to trademark rights holders that could arise in the expansion of the new gTLD namespace, and to help create efficiencies for registration service providers among gTLD launches. These new mechanisms are the Uniform Rapid Suspension System (URS), the Trademark Clearinghouse (TMCH) and the associated availability through the TMCH’s Sunrise Periods and the Trademark Claims Service, and the Trademark Post-Delegation Dispute Resolution Procedures (PDDRP).

Prior to the launch of the New gTLD Program, on 3 October 2011 ICANN staff had published a Final Issue Report on the current state of the UDRP. The recommended course of action in that UDRP Report was not to initiate a Policy Development Process (PDP) at the time, but to hold off launching any such PDP until after the new URS had been in operation for at least eighteen (18) months.

Subsequently, on 15 December 2011, the GNSO Council requested that ICANN staff prepare and publish a new Issue Report on the state of all rights protection mechanisms implemented for both existing and new gTLDs, including but not limited to the UDRP and URS. As a result of that GNSO Council request, the Final Issue Report on a PDP to Review All RPMs in All gTLDs was published on 11 January 2016.

On 18 February 2016, the GNSO Council voted to initiate the Policy Development Process (PDP) on the Review of All Rights Protection Mechanisms (RPMs) in All gTLDs. On 15 March 2016, the GNSO Council approved the PDP Charter for the review to be conducted in two phases. Phase 1 focuses on reviewing all the RPMs and associated structures and procedures applicable to gTLDs launched under the 2012 New gTLD Program. Phase 2 will focus on reviewing the Uniform Dispute Resolution Policy (UDRP), which has been an ICANN Consensus Policy since 1999. On 21 April 2016, the Working Group held its first meeting to commence its Phase 1 work and has been meeting regularly since that time.

The Working Group’s Charter, as approved by the GNSO Council, maps out the deliverables expected in each phase of work and notes the need for the Working Group to track and if appropriate, coordinate its work with other relevant efforts underway (e.g. the Competition, Consumer Trust & Consumer Choice (CCT) Review Team and the GNSO’s New gTLD Subsequent Procedures PDP). The Charter also includes several general, overarching questions as well as a number of additional questions that the Working Group is expected to address at the conclusion of Phase 1 or Phase 2 of its work, as appropriate.

Section III: Relevant Resources

- Phase 1 Initial Report of the Review of All Rights Protection Mechanisms (RPMs) in All gTLDs Policy Development Process (PDP) Working Group
- Google Form: https://forms.gle/dp7vo4dYmLantNsx7
  - PDF version
  - Word version
Section IV: Additional Information

1. PDP Working Group Charter
2. PDP Working Group Wiki Workspace

Section V: Reports

FINAL VERSION SUBMITTED (IF RATIFIED)

The final version to be submitted, if the draft is ratified, will be placed here upon completion of the vote.

ADOPTED

13Y*, 2A, 0N

*Humberto Carrasco, ALAC member of LACRALO, voted after poll close.

Link to BigPulse result (click here)

Note: ALAC statement was submitted via Google Form. The final responses submitted were based on the below 29 April CPWG presentation.

At Large RFC Rec...ations Final.pdf

FINAL DRAFT VERSION TO BE VOTED UPON BY THE ALAC

The final draft version to be voted upon by the ALAC will be placed here before the vote is to begin.
DRAFT SUBMITTED FOR DISCUSSION

The first draft submitted will be placed here before the call for comments begins. The Draft should be preceded by the name of the person submitting the draft and the date/time. If, during the discussion, the draft is revised, the older version(s) should be left in place and the new version along with a header line identifying the drafter and date/time should be placed above the older version(s), separated by a Horizontal Rule (available + Insert More Content control).
Note: ALAC statement was submitted via Google Form. As soon as PDF copy is received, it will be posted to this At-Large workspace. The responses submitted were from the below 29 April CPWG presentation, with the notes below.

29 April CPWG presentation:

Recommendation 6: URS providers should bear the cost of providing these materials as, in the end, it will save time and effort in any proceedings.

Sunrise service community question #5c: N/A

Charter questions:
#183 - N/A
#185, 186 and #187 - N/A
#189 -- slight rewording of proposed response:

While this is phrased as a general “end user” question, it is primarily relevant to end users with trademarks – individuals, businesses, non-profits, bands, etc. Many individuals and smaller businesses, as well as brand-owners in developing economies, have the same concerns as larger or better-financed trademark holders but may not have the experience and wherewithal to make use of the RPMs. There could be financial supports or subsidies to open the RPMs to these end-users. Beyond that, there are also non-financial supports that have the effect of lowering costs for these end-users, some of which are discussed in the Recommendations. These include increasing offerings of translations, translation services, educational materials, model submissions, helplines or chats, and even pro bono legal representation.